

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARK CHAVEZ,

Plaintiff,

v.

No. 15cv906 RB/CG

PETE V. DOMENICI UNITED STATES COURT HOUSE,

Defendant.

**MEMORANDUM OPINION AND ORDER
GRANTING MOTION TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING THE CASE**

THIS MATTER comes before the Court on *pro se* Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed October 8, 2015 ("Application"), and on his Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, Doc. 1, filed October 8, 2015 ("Complaint"). For the reasons stated below, the Court will **GRANT** Plaintiff's Application and **DISMISS** this case **without prejudice**.

Application to Proceed in forma pauperis

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962). “[A]n application to proceed *in forma pauperis* should be evaluated in light of the applicant's present financial status.” *Scherer v. Kansas*, 263 Fed.Appx. 667, 669 (10th Cir. 2008) (citing *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir.1988)). “The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs....” *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

The Court will grant Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs. Plaintiff states that: (i) his monthly income is \$813.00 in disability and EBT; (ii) his monthly expenses are \$525.00 in rent; (iii) he owns no assets; and (iv) he is unemployed. The Court finds that Plaintiff is unable to pay the filing fee because his total monthly income is only \$813.00.

Dismissal of Proceedings *In Forma Pauperis*

The statute governing proceedings *in forma pauperis* requires federal courts to dismiss an *in forma pauperis* proceeding that “is frivolous or malicious; ... fails to state a claim on which relief may be granted; ... or seeks monetary relief against a defendant who is immune from such relief.” See 28 U.S.C. § 1915(e)(2). “Dismissal of a *pro se* complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.” *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007). “In determining whether a dismissal is proper, we must accept the allegations of the

complaint as true and construe those allegations, and any reasonable inferences that might be drawn from them, in the light most favorable to the plaintiff.” *Kay v. Bemis*, 500 F.3d at 1217. The Court looks to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief, i.e. the factual allegations must be enough to raise a right to relief above the speculative level. *See id.* at 1218 (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). Dismissal of an *in forma pauperis* complaint as frivolous is not an abuse of discretion based on a determination that the *pro se* litigant did not state a viable legal claim and that the complaint consisted of little more than unintelligible ramblings. *Triplett v. Triplett*, 166 Fed.Appx. 338, 339-340 (10th Cir. 2006). However, “pro se litigants are to be given reasonable opportunity to remedy the defects in their pleadings.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 n.3 (10th Cir. 1991).

Plaintiff names the Pete V. Domenici United States Court House as the sole defendant.¹

The only allegations in the Complaint are:

They have been warned by federals about their illegal meetings

Roger Cox and associates got sued for unsolved deaths and the associates had meetings and filed paper work to recoup the money by running Spaniards out of town and

333 lomas Robs Spaniards

Roger Cox and associates got sued. The river got animated.

ABQ has a mining claim by Robbing Spaniards AKA Sandia Foothills and stuff

N.M. Robs Spaniards

Complaint at 1-5. Plaintiff states that he believes he is entitled to the following relief: “a lot.”

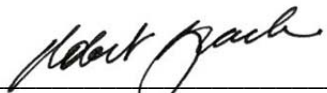
¹ Later in the form complaint he refers to Defendant as “New Mexico Traitor government.” Complaint at 1.

Complaint at 5.

The Court will dismiss this case because Plaintiff's Complaint fails to state a viable legal claim and it would be futile to allow Plaintiff to amend his Complaint.

IT IS ORDERED THAT Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed October 8, 2015, is **GRANTED**.

IT IS ALSO ORDERED that this case is **DISMISSED without prejudice**.


UNITED STATES DISTRICT JUDGE